

SURETY

December 28, 2022

MSK Construction, Inc.
1920 Dunbar St., Suite C
Charleston, SC 29407
Via US Certified Mail

Michael & Susan Williams
8344 Kamborne Court
North Charleston, SC 29420
VIA US Certified Mail

Virginia Marshall
25 State St.
Charleston, SC 29401
VIA US Certified Mail

Marshall Living Trust dated November 23, 1987
25 State St.
Charleston, SC 29401
VIA US Certified Mail

RE: Surety: United Fire & Casualty Company (UFG)
Principal: MSK Construction, Inc. (MSK)

Dear Indemnitors:

This follows our letters dated August 21, 2020, May 4, 2022, and October 3, 2022. In those letters, we gave you notice of MSK's insolvency and the concerns UFG had of receiving claims on the payment and performance bonds ("Bonds") it executed on behalf of MSK.

UFG has now received claims on these bonds. As you know, on November 21, 2022, the Department of Veterans Affairs (VA) terminated for default MSK from Project 659-341, Building 11 Additions and Renovation (MSK Bond No. 54-219901). Additionally, UFG has received payment bond claims on five bonded projects totaling \$2,746,105.21. See **Attachment 1** for a summary of the payment bond claims.

UFG has incurred attorneys' fees and consultant costs totaling \$48,407.44, investigating these claims, and responding to the default of MSK. Furthermore, UFG has now set a reserve in the amount of \$3,851,000.00 as a result of the claims made against the bonds.

Pursuant to the Agreement of Indemnity dated August 21, 2015 (the "GIA"), each of the indemnitors, jointly and severally, is required, among other things, to indemnify and hold UFG harmless from any and all losses, claims, demands, liabilities, etc. related to any bonds issued on behalf of MSK.

Each of the indemnitors, jointly and severally, is likewise required to post collateral with UFG "as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment, therefore. Such payment shall be equal to the amount of the reserve set by the Surety." See **INDEMNITY SECOND** paragraph below:

INDEMNITY SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefore. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and the Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be prima facie evidence of the fact and amount of the liability to the Surety.



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An immediate demand is made on each of you, as indemnitors, that executed the GIA, jointly and severally, to deposit with UFG certified funds in the amount of **\$3,899,407.44**. If these funds are not deposited by the close of business on January 13, 2023, UFG will file suit against you, as indemnitors, of the bonds, and seek other appropriate remedies of the law. This demand is in the amount UFG has incurred for costs incurred to date (\$48,407.44) plus the amount of the reserve set for claims made on the bonds (\$3,851,000.00). All amounts paid will be applied first to costs and losses incurred and then held as collateral security to protect UFG against future losses.

The failure to meet this demand and to provide the collateral security required to protect UFG from incurring losses will invalidate any request that you may make on UFG to litigate any claim, demand, suit, or judgment on the bonds. UFG has the absolute right to adjust, settle or compromise claims made on the bonds in the absence of the deposit of collateral security. See the **SETTLEMENT THIRTEENTH** paragraph below.

SETTLEMENTS THIRTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgement upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgement, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgement or judgements rendered or that may be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety.

Be advised that UFG has not waived nor will waive any terms or provisions of the GIA, and nothing that UFG or any representative says or does should be viewed as a waiver or estoppel. UFG fully and completely reserves all of its rights under its bonds, the GIA, or any other legal or equitable position it may have, including the right to seek additional collateral and/or to be indemnified with respect to its incurred losses and expenses

Sincerely,
UNITED FIRE & CASUALTY COMPANY



Stuart M. Overton, ASFB
Surety Claims Assistant Manager

Enclosure: Attachment 1

cc: Alliant Ins. Services Inc. 44-1058
Kimi McBurney (via Email)
Craig Ramseyer (via Email)
Charlie Altman (via Email)
Ryan Beaver (via Email)

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